UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
DEC 09 1994
CHARLES R. FULBRUGE III
CLERK

NO. 94-40119

MANSEL J. CARRIERE and
JANELL L. CARRIERE,

Plaintiffs-Appellants,

and

AETNA CASUALTY & SURETY COMPANY,

Intervenor-Appellant,

versus

CHANDELEUR ENERGY CORPORATION, ET AL.,

Defendants,

and

GREY WOLF DRILLING COMPANY, INC., and
PETROLEUM MARINE INSURANCE COMPANY, INC.,

Defendants-Appellees.

Appeals from the
United States District Court
For the Western District of Louisiana
(CA No. 92-1111)

Before REYNALDO G. GARZA, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM*:

Plaintiffs-Appellants Mansel and Janell Carriere, and Appellant-Intervenor Aetna Casualty & Surety Company, appeal a district court order granting the motion of Defendant-Appellee Grey Wolf Drilling Company for summary judgment. Grey Wolf's motion sought dismissal of the Carrieres' tort claim for a work-related injury sustained by Mr. Carriere. The

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court granted the motion based on the statutory employer immunity provision of the Louisiana workers' compensation law.

The Carrieres and Aetna (collectively, Appellants) challenge the district court's summary judgment in favor of Grey Wolf, asserting that the court erred when it decided to apply Louisiana workers' compensation law rather than the law of Texas. Appellants insist that their claim against Grey Wolf raises a choice of law issue that must be resolved according to Louisiana's conflict of laws provisions. Appellants urge that, when the appropriate Louisiana conflict of laws provision is applied to the facts of this dispute, it becomes apparent that the substantive law of

Texas governs their claim against Grey Wolf.

Contrary to the Appellants' assertions, we conclude that the district court made the proper conflicts choice when it selected Louisiana law and properly applied it in granting Grey Wolf's motion for summary judgment based on the immunity extended to statutory employers under Louisiana workers' compensation law. In our de novo review of the district court's ruling we conclude that, when considered under the totality of the circumstances, Louisiana's public policy, as manifested in its workers' compensation law, would be seriously impaired if that law were not applied to this particular dispute. In light of this determination, we reach the same result as did the district court

when it granted Grey Wolf's motion for summary judgment of dismissal.

I.

FACTS AND PROCEEDINGS

Plaintiff-Appellant Mansel Carriere, a Louisiana resident, was hired in Louisiana by Chandeleur Energy Corporation, a Texas corporation, to work at a drill site in Texas. Grey Wolf, another Texas corporation, conducted the drilling project using personnel furnished by Chandeleur pursuant to a contract between Chandeleur and Grey Wolf. Under this contract Chandeleur agreed to provide Grey Wolf with the laborers and supervisory personnel necessary to drill the well.

After Carriere was injured at the Texas location, he and his wife, Janell, brought this diversity jurisdiction suit

in federal district court. The action was grounded in negligence and strict liability against both Chandeleur and Grey Wolf.

Chandeleur filed a motion for summary judgment asserting that, as Carriere's direct employer, it is immune from civil tort liability for its employee's work-related injury by virtue of the exclusive remedy provisions of Louisiana's workers' compensation law. The district court granted Chandeleur's motion, concluding that the Carrieres' claim against Chandeleur was governed by Louisiana workers' compensation law. The district court found that the Carrieres' sole remedy against Chandeleur was the recovery of benefits provided by Louisiana's workers' compensation laws. As Louisiana law immunizes direct

employers from civil liability claims that are covered by workers' compensation, the Carrieres' suit against Chandeleur was dismissed. This ruling was not appealed.

After the district court ruled on Chandeleur's summary judgment motion, Grey Wolf filed its own motion for summary judgment. It posited that under Louisiana workers' compensation law, Grey Wolf, as Carriere's "statutory employer," is also immune from civil liability. The district court agreed with Grey Wolf and granted its motion for summary judgment based on the immunity extended to statutory employers under Louisiana law. The Carrieres and Aetna timely filed this appeal.

II

DISCUSSION

A. STANDARD OF REVIEW

The grant of a motion for summary judgment is reviewed de novo, using the same criteria employed by the district court.[1] In determining whether the grant of summary judgment was proper, we view all fact questions in the light most favorable to the nonmovant. Questions of law are reviewed de novo.[2]

B. DIVERSITY AND CONFLICT OF LAWS

The Carrieres, domiciliaries of Louisiana, brought suit against Grey Wolf, a Texas corporation, in a federal district court in Louisiana, with

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[1] United States Fidelity & Guar. Co. v. Wigginton, 964 F.2d 487, 489 (5th Cir. 1992); Walker v. Sears, Roebuck & Co., 853 F.2d 355, 358 (5th Cir. 1988).

[2] Walker, 853 F.2d at 358.

jurisdiction grounded in diversity of citizenship. Federal courts sitting in diversity are bound to apply the substantive law of the forum state, including the forum state's conflict of laws provisions.[3] Thus, argue appellants (and none disputes) the court must look to Louisiana's conflict of laws provisions to determine whether the substantive law of Texas or Louisiana governs this claim.

1. Article 3544: Financial Protection and Loss Distribution

Appellants assert that, as their dispute involves a choice of law between the statutory immunity provisions of the workers' compensation laws of Louisiana and Texas, it fits within the scope of

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[3]Klaxon Co. v. Stentor Elec. Mfg. Co., Inc., 313 U.S. 487, 496 (1941).

Civil Code article 3544, the conflict of laws rule covering issues of loss distribution and financial protection.[4] The Carrieres and Aetna rely on Kennington v. H. Blume Johnson, Inc.,[5] which resolved a statutory employer immunity conflict of laws issue between Louisiana and Texas workers' compensation laws by applying Civil Code article 3544 to the conflict.[6] A threshold issue in

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[4]See LA. CIV. CODE ANN. art. 3544 (2)(a) (West 1994) (conflict of laws provision for issues of loss distribution and financial protection) (prescribing that if at time of injury, injured person and person causing injury are domiciled in different states, and both injury and conduct causing injury occur in one state, laws of that state govern).

[5]632 So.2d 883 (La. App. 1994) revs'd on other grounds, 638 So.2d. 1966 (La. 1994).

[6]Id. at 886. Kennington, a Louisiana employee, was "leased" by his direct employer (a Louisiana corporation) to the defendant-appellant (a Louisiana corporation), and was subsequently

Kennington was whether the appropriate Louisiana conflicts provision was article 3543, the Civil Code provision governing standards of conduct and safety, or article 3544, the provision governing issues of loss distribution and financial protection. In resolving the choice of law issues by applying article 3544, the

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injured at a Texas job site. Kennington initially brought suit in Louisiana. He later tried to dismiss the matter without prejudice and file suit in Texas, claiming that Texas law, rather than Louisiana law, governed the case. The trial court determined that, as the Louisiana-based defendant was Kennington's statutory employer, the claim was covered exclusively by the Louisiana's workers' compensation act. Consequently, the trial court granted summary judgment in favor of the defendant. Kennington appealed, questioning the trial court's application of Louisiana law, and arguing that Texas law, rather than Louisiana law governed the dispute. The appellate court resolved the conflict of laws issue in favor of Louisiana law, and affirmed the summary judgment based on the immunity extended to statutory employers under Louisiana's workers' compensation law.

Kennington court reasoned that statutes that provide immunity from suit are appropriately classified as rules of loss distribution or financial protection.[7] Once the court determined that article 3544 governed the choice of law issue and applied the facts of the dispute to the provision, it concluded that Louisiana law was the substantive law to apply to the dispute.

The Carrieres and Aetna point out that, like the choice of law issue in Kennington, their dispute against Grey Wolf involves a conflict between the statutory employer provisions of Texas and Louisiana workers' compensation law. The appellants suggest that, as Kennington represents Louisiana's interpretation of the state's recently

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[7] Id.

revised conflict of laws provisions, we should be led by the state court's reasoning and resolve the instant conflict according to the elements of article 3544. They argue that, when the facts of the instant dispute are plugged into article 3544(2), the Code mandates that Texas law governs their claim against Grey Wolf.[8]

We agree that statutory employer immunity provisions involve issues of financial protection and loss distribution. We also agree that article 3544 of the Louisiana Civil Code is the appropriate conflicts provision with

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[8]See LA. CIV. CODE ANN. art. 3544(2) (West 1994) (when injured person and person causing injury are from different states (here Louisiana and Texas), and when injury and conduct that caused it are in one of those states (Texas), then the law of that state (Texas) governs dispute).

which to begin the choice of law analysis for this dispute. We do not agree, however, that, for this particular dispute, the choice of law analysis ends with the definitive result mandated by article 3544(2). We distinguish the facts of the instant case from Kennington and, for the reasons discussed below, conclude that the choice of law issue here presents an exceptional situation. It thus comes within the scope of the Code's conflict of laws provision for exceptional cases, which in this instance requires the application of Louisiana law to the dispute despite the fact that article 3544(2) mandates that Texas law applies.

In distinguishing the facts of the instant case from those of Kennington we first observe that previous adjudication

has already determined that Carriere is entitled to Louisiana workers' compensation benefits, whereas, the Louisiana Supreme Court, in reversing and remanding Kennington, concluded that Kennington's statutory employer was not entitled to evoke Louisiana's statutory employer defense because it had not satisfied its burden of showing that Kennington was entitled to Louisiana benefits. In addition, we consider significantly distinguishable the fact that unlike the plaintiff in Kennington, Carriere has already received compensation from his direct employer pursuant to Louisiana's workers' compensation law. Moreover, we note that, unlike Kennington, in which the court reasoned that Louisiana law was the appropriate substantive law to apply

because the same result was reached using either an article 3544 analysis or a separate interest analysis, we are unable to reach an analogous result.[9] We are convinced that even though a conflicts analysis under article 3544(2) would mandate the application of Texas law, a separate interest analysis reveals that Louisiana law would be most seriously impaired if Texas law were applied to the dispute. In light of these incompatible

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[9]In conducting a separate interest analysis the court noted that Louisiana law was the appropriate law to apply to the dispute because Louisiana's interests and policies were stronger than those of Texas. The court considered the following factors in its analysis: both parties were Louisiana domiciliaries, the plaintiff's employment was principally in Louisiana, the work in Texas was temporary, the only nexus between Texas and the parties was the occurrence of the accident there, and Louisiana has a strong interest in applying its workers' compensation laws to regulate the rights and liabilities of the employer and the injured employee.

conclusions, we determine that we must look to the Code's conflict of laws provision that addresses this type of "conflict within a conflict." Thus, we carry the choice of law analysis presented in this appeal a step further and analyze it under article 3547, the Code provision governing "exceptional cases."[10]

2. Article 3547: Exceptional Cases

Article 3547 provides the following:

> [t]he law applicable under Articles 3543-3546 shall not apply if, from the totality of the circumstances of an

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[10]We are not concluding that section 3544 never applies to a dispute involving competing statutory employer immunity provisions. Neither are we contradicting the Louisiana courts' interpretation of the code's conflicts provisions. We are merely taking the conflicts analysis the necessary step further in light of our conclusion that given the exceptional status of this dispute the policies of Louisiana would be adversely affected if Texas law was applied to the dispute.

> exceptional case, it is clearly evident under the principles of Article 3542, that the policies of another state would be more seriously impaired if its law were not applied to the particular issue. In such event, the law of the other state shall apply.[11]

Commentary to article 3547 notes that the choice of law rules contained in Articles 3543-3546 were established to avoid the laborious analysis required by Article 3542, the general rule for choice of law issues. The commentary also notes, however, that the rules contained in Articles 3543-3546 may, in exceptional cases, produce a result that is incompatible with the principles of Article 3542. Thus, article 3547 provides an "escape mechanism" for avoiding otherwise incompatible results

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[11]LA. CIV. CODE ANN. art. 3547 (West 1994).

in resolving choice of law issues.

When a court is convinced that the laws of a state other than the one designated by Articles 3543-3546 would be significantly impaired if not applied to a dispute, then the law that is designated by Articles 3542-3546 must yield to Article 3542 and the law of the state whose policies would be most seriously impaired governs the particular dispute.[12] As we are convinced that Louisiana law would be most seriously impaired if Texas law were applied to the dispute, thereby concluding that Texas law must yield to Louisiana law, we discuss briefly the key elements of article 3547, namely the principles of Article 3542 and the totality of the

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[12]LA. CIV. CODE ANN. art. 3547 commentary (West 1994).

circumstances that lead us to conclude that this is an exceptional case.

a. *Principles of Article 3542: An Interest Analysis*

Article 3542 provides that, except as otherwise provided, issues of delictual or quasi-delictual obligations are governed by the law of the state whose policies would be most seriously impaired if its laws were not applied to the issue in dispute.[13] That state is determined by evaluating the strength and pertinence of the state's policies in light of the pertinent contacts of each state to the parties and the events giving rise to the dispute, including the place of conduct and injury; the domicile or place of business of the parties; the state in which the relationship was

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[13]LA. CIV. CODE ANN. art. 3542 (West 1994).

centered; and the policies of Article 3515 (the policies and needs of interstate systems, the policies of upholding the justified expectations of the parties, and the policy of minimizing the adverse consequences that might follow from subjecting a party to the law of more than one state).

We compare the policies and interests of both Texas and Louisiana to support our conclusion that, as Louisiana's interests and contacts are greater than those of Texas, the policies of Louisiana would be most seriously impaired if its laws were not applied to the instant dispute. Texas' interests are (1) Grey Wolf is incorporated in Texas; (2) the place of conduct and injury are in Texas; and (3) Texas, we surmise, has an interest in deterring

wrongful conduct and repairing the consequences of injurious acts. Louisiana's interests - stronger by comparison - are (1) Carriere is domiciled in Louisiana; (2) Grey Wolf is qualified to do business in Louisiana, and is doing business in Louisiana; (3) Carriere was working for Grey Wolf pursuant to a Louisiana contract for hire; (4) Carriere's direct employer, with whom Grey Wolf established the contractual relationship to "hire" Carriere is domiciled in Louisiana; (5) Carriere has received workers' compensation benefits for his injury pursuant to Louisiana law; (6) Louisiana has an interest in protecting both citizens who are recruited and hired in Louisiana and employers that are doing business in the state; (7) Louisiana has

an interest in protecting foreign corporations in order to create a friendly business atmosphere in which to promote commerce and industry; (8) Louisiana has an interest in the consistent and comprehensive implementation of its workers' compensation laws; and (9) as articulated by article 3515, the policies and needs of the interstate system, which includes the expectations of the parties and the minimization of adverse consequences that might follow from subjecting a party to the law of more than one state are best served in this dispute by the application of Louisiana law. When the totality of these factors is considered it is evident that the policies of Louisiana would be more seriously impaired if Texas law were applied to this dispute than would Texas

if Louisiana law were applied.

b. *Totality of the Circumstances and Exceptional Cases*

To reach our classification of this case as "exceptional," we analyze it in the perspective of the totality of the circumstances: Carriere's accident yielded claims against two contractually related defendants, Chandeleur and Grey Wolf; the Carrieres' claim against Chandeleur, a foreign corporation and Carriere's direct employer, was resolved properly by application of Louisiana's workers' compensation law; Carriere was compensated for his injury pursuant to Louisiana law; Appellants' claims against Grey Wolf - which are based on the same accident - are made against a second defendant which, like Chandeleur, is also a foreign corporation; under Louisiana law - the same law that has

already compensated Carriere for his injury vis á vis the first defendant (Chandeleur) - the second defendant (Grey Wolf) clearly qualifies as an immunized statutory employer,[14] yet in this dispute, Carriere urges us to apply Texas

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[14]See LA. REV. STAT. ANN. § 23:1032 A. (1)-(2) (West 1994) (articulating that remedies provided to employee under statute are exclusive remedies against employer and statutory employer, thereby immunizing employer(s) from civil tort liability); see also, Morgan v. Gaylord Container Corp., 30 F.3d 586, 589 (5th Cir. 1994) (citing Deal v. International Paper Co., 632 So.2d 870, 871 (La.App. 1994), rev'd, 637 So.2d 453 (La. 1994)) (reiterating that statutory employer relationship exists when contract work performed by employee is integral or essential to principal's trade or business); see also Salsbury v. Hood Indus., Inc., 982 F.2d 912, 916 (5th Cir. 1993) (articulating that appropriate standard for determining statutory employer status is "integral relation" test).

The parties do not dispute that under Louisiana law, Grey Wolf is Carriere's statutory employer, and thus, is immune from civil tort liability for any claims arising from an injury that is compensated under the state law.

law so that he can recover in tort against Grey Wolf; and finally if, by running Appellants' claims simplistically through a Civil Code article 3544(2) checklist, we were to conclude that Texas law applies, we would be guilty of failing to consider the effect that such a ruling would have on Louisiana's workers' compensation law - again, the law under which Carriere has already applied for and received benefits.

C. *Analogous Case Law*

When an analysis under article 3547 is viewed in conjunction with Louisiana's interest in the consistent and comprehensive application of its workers' compensation law we see clearly that, if Texas law were to be applied to this dispute, Louisiana law and the policy it

embodies would be seriously impaired. The propriety of this conclusion is bolstered by the recognition that once an injured employee elects to seek and receive worker's compensation benefits under the workers' compensation law of Louisiana, he is bound to its provisions, including specifically the exclusivity provisions.[15] Agreeing with the

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[15] See e.g., Carriere v. C.C. Crane Corp., 812 F. Supp. 90, 91 (S.D. Tex. 1992)(hereinafter, "Crane"). In Crane, Ronald Carriere, a Louisiana resident, was killed in Texas while working for the defendant, Grey Wolf, a Texas corporation. As a result of Carriere's death, his widow began receiving benefits pursuant to Louisiana workers' compensation laws. Subsequently, Mrs. Carriere filed a claim against Grey Wolf for death benefits under Texas law. The district court granted Grey Wolf's motion for summary judgment, holding that once Mrs. Carriere began receiving Louisiana workers' compensation benefits she was bound to Louisiana workers' compensation law. As Louisiana law immunized Grey Wolf from civil liability for Carriere's death, the district court would not permit Mrs. Carriere to sustain a tort

reasoning of the district court in Crane, we conclude that if, under the totality of its circumstances of the instant case, Mansel Carriere were permitted to bring suit against Grey Wolf in Louisiana but were also permitted to have Texas law apply - despite his having received benefits under the Louisiana regime - we would not be giving "full faith and credit to the policies which [Louisiana] wants to preserve in providing for employer immunity."[16]

Our Erie-bound decision to protect Louisiana's workers' compensation law to its full extent comports with an earlier Louisiana state court case, Wayne v.

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action against Grey Wolf based on Texas law. Id. at 90 - 93.

[16]Id. at 92.

Olinkraft,[17] in which the court reviewed a choice of law issue almost identical to the one at issue in the instant case.[18] In Wayne the state appellate court

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[17]293 So.2d 896 (La. App. 1974).

[18]See id. The plaintiff in Wayne was the widow of an employee whose employer had contracted out its services (and employees) to the defendant corporation The deceased employee, a Louisiana domiciliary, was hired in Louisiana by his direct employer, a Louisiana corporation, but was killed while working in Arkansas for the defendant, his statutory employer. The employee's widow filed for, and began receiving, Louisiana workers' compensation benefits under the direct employer's compensation insurance policy. Subsequently, she brought a tort action against the defendant in Louisiana. The trial court granted the defendant's motion for summary judgment based on Louisiana's statutory employer immunity. The plaintiff appealed the trial court's grant of summary judgment, asserting that Arkansas law rather than Louisiana law governed the dispute. The appellate court affirmed the trial court's grant of summary judgment based on Louisiana workers' compensation law, holding that as plaintiff had received Louisiana benefits, she was bound to the full extent of Louisiana law.

discussed the Restatement (Second) Conflict of Laws in detail before holding that an employee who accepts an award under the workers' compensation scheme of a given state may be bound by the provisions of that scheme insofar as immunity from tort and wrongful death liability is concerned.[19] The state

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[19]Id. at 900. The court in Wayne recognized that there are occasions when conflict of laws provisions permit tort actions in one state even though another state declares the defendant immune. See e.g., Restatement (Second) Conflict of Laws, § 183 (articulating that a state is not precluded from permitting an action in tort or wrongful death by the fact that party would be immune under a sister state's workers' compensation laws).

The Wayne court based its holding, however, on the distinction noted in section 184 of the Restatement, which reads as follows:

> Recovery for tort or wrongful death will not be permitted in any state if the defendant is declared immune from such liability by the workmen's compensation statute of a state under which the defendant is required to provide insurance

court concluded that the principles of the Restatement offered a logical, fair, and stable solution to the conflict of laws issue.[20]

> against the particular risk and under which (a) the plaintiff has obtained an award for the injury, or (b) the plaintiff could obtain an award for the injury, if this is the state (1) where the injury occurred, or (2) where employment is principally located, or (3) where the employer supervised the employee's activities from a place of business in the state, or (4) whose local law governs the contract of employment under the rules of ss 187-188 and 196.

Restatement (Second) of Conflict of Laws § 184 (1969).

Commentary to the Restatement notes that this rule applies to actions brought against immediate employers and indirect employers. In addition, the rule applies whether the defendant is required to obtain workers' compensation itself, or whether a third party is required to obtain the necessary insurance. Id. at comment a.

[20]Wayne, 293 So.2d at 900. The courts in Crane and Wayne both note that to deny a person the immunity granted him by a

We are satisfied that Crane and Wayne still tender "good law" despite their antedating the substantial revision of the Louisiana Civil Code's conflict of laws provisions. These cases highlight the exceptional status of this dispute, provide analogous support for our conclusion that Louisiana law would be seriously impaired if Texas law were applied to the instant dispute, and dictate our ultimate conclusion that once an injured employee applies for and receives benefits from the workers' compensation laws of a given state, the laws of that state apply in full to

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workers' compensation statute of a given state frustrates the efforts of that state to restrict the cost of industrial accidents and to afford a fair basis for predicting what those costs will be. Carriere v. C.C. Crane Corp., 812 F.Supp. 90, 92 n.5 (S.D. Tex. 1992); Wayne, 293 So.2d at 900.

related claims of the injured employee.

Today's holding should not be interpreted, however, as blanket protection for foreign corporations under Louisiana law. Rather, it is a particularized response to an exceptional case; a response that avoids the piecemeal application of different laws to an equally piecemeal attempt to obtain double - or at least overlapping - recovery for the same injury.

III

CONCLUSION

When we consider this case in light of the totality of the underlying circumstances, we are convinced that Carriere's suit against Grey Wolf is an exceptional conflict of laws case, and that Louisiana workers' compensation law would be seriously impaired if it were

not applied to this particular dispute. Consequently, we are convinced that a Louisiana court, pursuant to Louisiana Civil Code article 3547, would apply Louisiana substantive law to Carriere's dispute against his statutory employer, Grey Wolf. We affirm, therefore, the district court's order granting Grey Wolf's motion for summary judgment on the rationale that under Louisiana law Grey Wolf is immune from civil tort liability for the same injuries that are already covered and compensated under Carriere's workers' compensation claim.

AFFIRMED.

WESTERN DISTRICT OF LOUISIANA
FILED
JAN 11 1994
ROBERT H SHEMWELL, CLERK
BY S/ MS
DEPUTY

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE-OPELOUSAS DIVISION

MANSEL J. CARRIERE and JANELL L. CARRIERE	CIVIL ACTION NO. 92-1111 L-O
VERSUS	JUDGE HAIK
CHANDELEUR ENERGY CORPORATION and GREY WOLF DRILLING COMPANY	MAGISTRATE TYNES

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JUDGMENT

A hearing was held on December 16, 1993, on the Motion for Summary Judgment filed by Grey Wolf Drilling Company and Petroleum Marine Insurance Agency, Inc. After having reviewed the relevant pleadings, the briefs of all parties, and after hearing oral arguments of all

parties, the Court is of the conclusion that the Motion should be granted, for the reasons expressed by the Court during the oral argument, and, accordingly;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment filed by Grey Wolf Drilling Company and Petroleum Marine Insurance Company be and it is hereby granted, and the claims of Mansel Carriere and Janell Carriere, and Aetna Casualty & Surety Company, against Grey Wolf Drilling Company and Petroleum Marine Insurance Agency, Inc., are hereby dismissed with prejudice and at Plaintiff's cost.

Thus done and signed this 10th day of January, 1994, in Lafayette, Louisiana.

/S/ R.T. Haik
UNITED STATES DISTRICT JUDGE

Judgment Entered 1-13-94

BY S/ MC
COPY TO CAVE
GIBSON
WILKES
WARTELLE

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE/OPELOUSAS DIVISION

MANSEL CARRIERE

VERSUS

CHANDELEUR ENERGY CORPORATION, ET AL

CIVIL ACTION
NO. 92-1111
DECEMBER 16, 1993

Transcript of proceedings before the HONORABLE RICHARD T. HAIK, SR., United States District Judge.

Proceedings recorded by mechanical stenography; transcript produced by computer.

Vivian A. Duhe'
Official Court Reporter (318) 262 6634

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* - spelled phonetically

PROCEEDINGS:

MR. GIBSON: Good morning. I'm Paul Gibson, Your Honor, for Grey Wolf Drilling Company and Petroleum Marine Insurance Company, and with me is Mr. Mark Marionneaux.

MR. CAVE: Good morning, Your Honor. I'm Don Cave. I represent Mr. Carriere, and we oppose the motion.

MR. WARTELLE: Your Honor, Patrick Wartelle. I represent Aetna Casualty and Surety Company, which is an intervenor, and we are joining in with the plaintiff and opposing the motion.

THE COURT: Okay.

MR. GIBSON: May it please the Court, Your Honor, this is a Motion for Summary Judgment by Grey Wolf Drilling Company and PMI asking for dismissal because of the statutory employer status

of Grey Wolf Drilling Company.

Mansel Carriere, the plaintiff, was injured on Grey Wolf Drilling Rig Number 14. He was employed at the time directly by Chandeleur Energy Company where he was working as a motorman. He was part of the regular crew and -- of Rig 14 and had been for some time. Grey Wolf is a drilling company. They own the rig, and they had a contract with Chandeleur to provide employees to operate Rig 14. And it's important to recognize that we are not talking about an employee leasing arrangement like Man Power where we call up and get somebody out for a three day labor help out in the yard. Chandeleur was contracted to provide employees to run the rig -- Grey Wolf's rig, to do the work that Grey Wolf was up to, namely drilling oil and gas holes, well holes,

and Grey Wolf had initiated this operation by contracting with Union Pacific Resources to drill the hole. That contract was executed. Grey Wolf made arrangements to send its rig out there and actually made a contract with Chandeleur seven days later to provide the employees to do the work of actually putting the hole in the ground.

Mansel Carriere was injured while they were tripping pipe. I don't know whether it was tripping pipe out of the hole or in the hole, but he was a motorman working the tongs on the rig floor when he was injured. He brought suit against Chandeleur, Aetna, Grey Wolf in this court. Initially, Aetna, the workers' compensation insurer of Chandeleur, denied coverage when that happened, when the coverage was denied,

Mansel Carriere, the plaintiff, demanded that Grey Wolf, his statutory employer, pay him worker's comp., which Grey Wolf did under 23:1061 of the workers' comp. statute.

Now, in January of this year, this Court entered a judgment holding that Mansel Carriere's claims against Mansel -- against Chandeleur were covered and governed by the Louisiana workers' comp statute. Now, that should be as far as the inquiry goes, because the exclusive remedy of Mansel Carriere against Chandeleur is under workers' comp. When workers' comp. applies to that claim, Grey Wolf, as a function of the operation of the Workers' Comp. Act, is the statutory employer of Mansel Carriere and is immune from suit.

What's happened is now that comp. is

up to date, plaintiff wants to pursue another remedy under another state's law, sort of a cafeteria plan, take some of the Louisiana Workers' Comp. Act, use it here to get some comp. and then throw out the rest of the Act that provides for immunity to the statutory employer, clearly, clearly covered within the Comp. Act. "Let's throw that out and let's bring in another state's law so that we can get a double recovery against Grey Wolf."

Since the Court has held and since Louisiana law applies to the plaintiff's claim against Chandeleur, the only issue on the motion for summary judgment is whether Grey Wolf is the statutory employer of Mansel Carriere.

In the opponent's brief, you don't see a word arguing that Grey Wolf is not

the statutory employer.

THE COURT: Let me ask him that.

Do you disagree that he's a statutory employer?

MR. CAVE: He's not the statutory employer under Texas law. He is under Louisiana. It's a question of what conflicts laws apply. Under Louisiana law, Your Honor, he is the clearly statutory employer. This accident didn't occur in Louisiana. It occurred in Texas. So under the conflicts there is no statutory employer defense in Texas. So, what law is applied, Louisiana or Texas?

MR. GIBSON: Your Honor --

THE COURT: I'm going to apply Louisiana. I think he's clearly a statutory employee under Louisiana law, and I think -- How can we do both here?

How can I order him as you requested last time that-- And there was no appeal from that. There was no appeal from my last order. Did you appeal from that?

MR. CAVE: No, Your Honor. We agreed that Chandeleur was his employer.

THE COURT: Okay.

MR. CAVE: We agreed on that. You have to understand that Chandeleur and Grey Wolf are both Texas companies. You have to understand that this accident occurred in Texas. The law under -- Federal Courts look to the Louisiana law on conflict. When you look to the Louisiana law on conflict, Civil Code Articles 3542, 3543 and 3544 says the law of the place where the injury and the conduct occurs. That's Texas. So, if you apply the conflicts rules in Louisiana, Texas substantive tort law

applies.

MR. GIBSON: Your Honor, our position is that there is no conflict. You see, the plaintiff -- all parties here jointly submitted the judgment to this Court. Mansel Carriere's claims against Chandeleur are covered by Louisiana comp. law.

THE COURT: And nobody appealed that.

MR. GIBSON: No conflict.

MR. CAVE: But that's not the issue here, Your Honor. Mansel Carriere's claims against Grey Wolf are covered by the tort law of Texas. He's not the employee of Grey Wolf.

THE COURT: Well, sure he is. He is a statutory employee of Grey Wolf. All of the people there were Grey Wolf-- Chandeleur people. All of the

supervisors there were--Am I wrong on that?

MR. CAVE: Yes, Your Honor. That's incorrect. They were all the employees of Chandeleur. The Vernon's Texas Statute says a subcontractor and a subcontractor's employees are not employees.

THE COURT: But all of the people on that rig were Chandeleur people; am I right?

MR. CAVE: That's correct.

THE COURT: Every one of them?

MR. CAVE: Every one of them.

THE COURT: And they went over there to run Grey Wolf's rig.

MR. CAVE: Under a contract signed in Texas, that's correct. That's correct. But, Your Honor, Grey Wolf is in the position of a products liability

manufacturer. They supplied a defective piece of equipment. Grey Wolf-- He wants to throw me in the briar patch. Grey Wolf had no workmen's compensation. He wants to say, "Well, if Chandeleur didn't have workmen's compensation, Grey Wolf will take it over." Grey Wolf had no workmen's compensation. The whole purpose of the statutory scheme is that if the subcontractor does not have workmen's compensation, then whose principal or trade under Louisiana law goes up to that for compensation. That's not the situation here. There is a clear cut conflict situation. Under Louisiana law he has no claim against Grey Wolf. Under Texas tort law he's got a complete claim in tort. The question is, Your Honor, does the Court use the conflicts law of Louisiana which applies Texas

substantive law? That's the question.

MR. GIBSON: Your Honor, the briar patch is a great analogy, it really is, because what we had was a situation where Mr. Carriere was hurt, okay. The way that this was all resolved was that this--you know, this Court decided the way we get this man through this briar patch where Grey Wolf is paying his comp. as the statutory employer, paying him comp., Judge, $30,000, the way we get him through this briar patch is to take the path that leads--that is shown by the Louisiana Workers' Comp. Statute. That's how we do it. Okay. Now, that's when Aetna came on board and paid--started to pay Mr. Carriere. And I wanted to address something. In brief, counsel says -- I couldn't believe my eyes when I read it -- says that Grey Wolf was fully

reimbursed for their comp. I can't believe they said it, Judge. Here is a transcript of a worker's comp. proceeding where both of these gentlemen were there. They know that Grey Wolf was only reimbursed half of what they paid. They are still out 15 thousand.

One of the absurdities of this case is that if Texas law applies, Grey Wolf has to intervene against itself, and that's really on the policies of workers' comp. is that, you know, it's negligence blind; accident happens on the job, the man gets compensated. We are in the briar patch. Now we got comp. Now we are getting the weekly checks. Let's find another path through the briar patch, Judge. Let's go to Texas and lets find some Texas comp. statute that's argued in the case for the first time to

support the theory that Texas tort law applies. Let's cut us another path in the briars and see if we can get around the comp. to go make some more money. And that's all we are doing. We don't really have a conflict. The clear law is that Louisiana workers' comp applies. When you apply it, it applies all the way up. Mansel Carriere knew that. Mr. Cave knew that. That's why he demanded comp. from Grey Wolf. That's why Grey Wolf paid comp. There is no tort remedy against Grey Wolf in this case, and we ask for summary judgment.

MR. WARTELLE: Your Honor, might I be heard?

THE COURT: Sure.

MR. WARTELLE: Judge, I intervened in this case on behalf of Aetna. I filed an intervention. And I wasn't in it from

the start, but I have been defending the -- the comp. cases filed by these gentlemen that worked for Chandeleur who had previously worked for Grey Wolf. So I am extremely familiar with the facts of all of the cases. There is three or four of them, and in particular this case.

A few things need to be cleared up. The first thing is, and I don't think defense counsel meant to do this, but he said that the judgment was rendered by the Court. The Court did render that judgment. And that they all agreed to it. I was not-- My client was not a party to that. I don't think that I would have agreed to a judgment along those lines. I don't really know how the Court came to the judgment and who argued what and who submitted the judgment. What the judgment said --

THE COURT: But that judgment is now over and done and it's finished.

MR. WARTELLE: I understand, Your Honor. I understand that. But what the judgment says, Your Honor, is as to Chandeleur, not as to Grey Wolf, as to Chandeleur, the Court is going to apply Louisiana law. That's one issue, the plaintiff's claim against Chandeleur. And frankly, Your Honor, I'm licensed to practice in Texas but I am not an expert on Texas law. Really, the notation that you are going to apply Louisiana law as to Chandeleur, you don't even need that, because in Texas, Chandeleur is also going to be responsible for the man's comp., because the man in fact was receiving pay checks from Chandeleur. So that's really dicta, what you put in the judgment. And I don't know who prepared

the judgment. I doubt if the Court did that. I suspect these guys did that for reasons -- and the Chandeleur lawyer -- for reasons more to do with the workers' comp. claim, because they are now taking that judgement and hitting me over the head in these workers' comp. cases and saying, "Look, Louisiana law applies because there are some questions on jurisdiction in the workers' comp. cases." I think it was really more for posturing in the other case. I don't think you really needed all that language.

Your Honor, setting that aside, the real salient issue -- I wish I could argue that the man -- if you applied Louisiana law, that the man was not a statutory employer, under the old Barry* cases I might have an argument. At least

I would have an argument that there were some factual questions, and the jury could make a decision. Under the enactments to the statute, it's going to be hard for me to argue that. But the real issue is-- They are missing the issue or they don't want the Court to see the issue. The issue is in fact what Mr. Cave says it is, whether you are going to apply Texas law or you are going to apply Louisiana law. Your Honor, there is a very simple easy answer to it. Mr. Cave briefed it, so I didn't brief it again. Article 3542, I think, if you have the Civil Code, or it's 3543 --

THE COURT: I've got a copy of it right here.

MR. WARTELLE: Your Honor, look at Article 3542--43, I'm sorry, Civil Code. It's a specific rule, a Louisiana rule

for conflicts of law. The Court is well aware that under the Claxon case, because this Court is sitting in diversity, it must apply Louisiana law, substantive law, and Louisiana conflicts of law. That's the first step we need to take.

MR. GIBSON: We'll stipulate to that, Judge.

MR. WARTELLE: The Court is aware of that. So, therefore, we go to the Louisiana Code. Under Article 3543, the code literally says if there is an issue of loss distribution or financial protection, if that is the issue, then, under subsection two, if the plaintiff is a resident of one state and the defendant Grey Wolf, which is stipulated, is a resident of Texas, if they are residents of two different states, subsection two says if the injury occurred in the state

and the conduct occurred in the state, then you apply the law of that state, if it's a loss protection issue. The injury occurred, Your Honor; there is no doubt he got hurt in Texas. The conduct occurred in Texas, that is the conduct of them continuing to use an allegedly defective piece of drilling equipment. Those two things occurred in Texas. They are in Texas. The plaintiff is in Louisiana. Under the literal, in my opinion, black and white language of Article 3543, we must apply the law of Texas under the Code, Your Honor. And Mr. Cave has briefed it, and if you want to look at-- To me, the Code article satisfies this whole argument.

What they argued in their reply brief, which is why I came here today, Your Honor, because I got it the day

before yesterday and I called your clerk and she said, "Just make your oral argument --"

THE COURT: She told you that? You didn't file a brief?

MR. WARTELLE: I did file my first brief, and I basically said we would stipulate to what the plaintiffs are arguing. I didn't have time to put a reply brief together yesterday. I would have, but--

THE COURT: I wouldn't have read it.

MR. WARTELLE: That's why she said don't do it. And, Your Honor, what the defense argued in its reply brief is that -- and which I can't even believe. It's amazing that they would even argue -- that this is not an issue of financial protection -- I think those are the words

-- or loss protection -- financial protection and loss distribution. They said that's not the issue. Your Honor, that is exactly the issue here, which is whether they are going to be the statutory employer and whether they are going to have the protection or the loss distribution, who is going to suffer the loss and the financial protection of Mr. Plaintiff. That is the issue. Therefore, that Code article applies.

There are some other things that they said, Your Honor, I want to point out to you because I am just amazed. They said that the work operations for Grey Wolf are in Louisiana. Well, they do have a yard in Duson. What they didn't tell you, Judge, is that Grey Wolf is incorporated in Texas, their offices are in Texas.

THE COURT: I knew that.

MR. WARTELLE: I wasn't sure about that. I just wanted to make sure.

MR. GIBSON: Your Honor, if we didn't put that in the brief, we meant to.

THE COURT: I knew that. I know that.

MR. WARTELLE: I didn't know, Judge.

THE COURT: I knew it. It's in the memorandums.

MR. WARTELLE: Okay.

THE COURT: I don't think that's disputed.

MR. WARTELLE: Okay.

What they are also arguing to you, Your Honor, is because you said something about the issue as to Chandeleur, that the Court is bound by that, that is, "Well, because I'm going to apply

Louisiana law as to Chandeleur, I'm bound by that as to Grey Wolf." And they argue that to do otherwise would result in piecemeal determinations on application of law. Your Honor, I would suggest to you that in the Civil Code, it is mandatory that the Court examine each issue and make a determination as to which law will apply. And there are Louisiana cases on that point, too. Depending on the issue, the Court can apply the laws of different states.

In the case, as I think I told you earlier, I think the Civil Code is very clear on it.

They argue -- the defense argues that this is not a defense of loss distribution. Your Honor, the Fifth Circuit has already ruled in a couple of cases that in fact the statute that they

are relying upon R.S. 23:1032 and 1061, one of the public policies is the insulation of a principal from third-party liability in some circumstances. So, in fact, Your Honor, that statute does govern financial protection and loss distribution.

Your Honor, one of the -- one of the things that really prompted me to come over here, perhaps more than anything, in their brief -- and this really needs to be cleared up for the Court -- in their brief that they argued that Mansel Carriere, the plaintiff, quote "Settled his worker's compensation claim against Grey Wolf for a substantial sum of money."

Your Honor, what happened is it was litigated bitterly, the worker's comp. claim. Mr. Carriere settled his comp.

claim. Aetna paid him. Aetna had disputed jurisdiction by filing--

THE COURT: So what?

MR. WARTELLE: Because that's an erroneous statement in their brief. And I agree with you, so what? It doesn't really matter whether he settled his comp. claim. I agree. I just wanted to clear that up.

Your Honor, one last thing, and this is -- and this is probably the best way for the Court to decide it if the Court is unsure about the application of the Civil Code article is a matter of public policy. The defendants argue that Louisiana's interest are served by application of Louisiana law, and they say the Louisiana policies of deterrence and repairing consequences are served. Now, those are policies that the Court

should consider.

How is Louisiana's policy of deterring somebody's conduct and using something that's broken, in this case Grey Wolf, how is that served by letting Grey Wolf off the hook as a statutory employer and letting them out the back door? I would suggest to you, Your Honor, that they are right, that is a policy the Court should consider. But in this case, the policy favors application of Texas law, because if the plaintiff is allowed to recovery in tort against Grey Wolf, maybe they will fix their broken equipment, assuming it's broken.

THE COURT: I'm going to have the court reporter transcribe that last statement for the next time you argue on the other side of that issue.

MR. WARTELLE: Your Honor, I know.

These cases have gotten me coming and going depending on where I am. You are right.

THE COURT: This is the first time I have ever heard you argue in that fashion.

MR. WARTELLE: Your Honor, people have heard a lot of strange stuff from me in the last year.

The second public policy consideration that they bring up, and they are right, it is a consideration, is the State's interest in repairing the consequences of what happened. In the words of the defendants, they are right, there really is no conflict, because Louisiana doesn't have an interest in that either, at least in favor of applying its own law, because if their law is applied, the consequences, Mr.

Carriere's damages, will not be repaired. So, the two main policy considerations that they cite, the defense cites deterring negligent conduct and repairing damages, Louisiana's interests are nil, because if you apply Louisiana law, there will be no deterrence and there will be no repair.

Your Honor, I would suggest to you that the interests are served by application of Texas law. Mr. Carriere will be recompensed for his damages, the negligent conduct will hopefully be deterred, and under the literal terms of Article 3543, Section Two of the Code, Texas law will apply, and that's consistent with the public policy considerations as set forth in the advisory notes to the Civil Code articles.

That's it.

THE COURT: Brief response?

MR. GIBSON: Your Honor, I just noticed-- I just noticed, Your Honor, that throughout both of counsel's responses, no one explained how we are going to -- how you get around the fact that Grey Wolf as the statutory employer of Mansel Carriere can be sued in tort. Under the Louisiana Workers Comp Act, you know, the sidetracking over into the choice of law kind of thing is only a way of them trying to ring the bell by--but not having to deal with the real issue of the application of workers' comp. to Mr. Carriere's claim. As an immediate function of the application of that statute, Grey Wolf is determined to be the statutory employer and immune from this suit. No one has been able to

explain how you get around that. Maybe we should get a set of scissors and just sort of cut it out of the green books, that one section that gives statutory immunity. But other than that, you can't do it. Grey Wolf is immune.

Grey Wolf is also, despite what Mr. Wartelle says, out $15,000 to Mr. Carriere that hasn't been reimbursed yet. What does Grey Wolf do? Intervene in this suit against itself? You know, their entitlement to that is granted under the Workers Comp Act that Mr. Cave is collecting the money on right now. They don't address this issue, Your Honor. They want to sidetrack and go over into another area supported with-- If you will not in the brief, Texas comp. law is cited as, you know, the authority to use Texas tort law. And, you know, the whole

rational is flawed, Your Honor. You never get to the choice of law question. The law applicable in the case is Louisiana Workers Comp.

THE COURT: I have to agree with you. I don't think we get to that point. I'm going to grant the Motion for Summary Judgment.

I'll sign a formal order upon presentation.

MR. GIBSON: Thank you, Your Honor

MR. WARTELLE: Thank you, Judge.

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C E R T I F I C A T E

I, Vivian A. Duhe', Official Court Reporter, in and for the United States District Court, do hereby certify that the foregoing 19 pages of typewritten matter constitute a true and correct transcription of my stenographic notes and mechanical recordings in the foregoing entitled cause.

I certify that the transcript fees and the format comply with those prescribed by the Court and Judicial Conference of the United States.

/s/ Vivian A. Duhe'
Vivian A. Duhe'

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
JAN 17 1995
CHARLES R. FULBRUGE III
CLERK

NO. 94-40119

MANSEL J. CARRIERE and
JANELL L. CARRIERE,

Plaintiffs-Appellants,

and

AETNA CASUALTY & SURETY COMPANY,

Intervenor-Appellant,

versus

CHANDELEUR ENERGY CORPORATION, ET AL.,

Defendants,

and

GREY WOLF DRILLING COMPANY, INC., and
PETROLEUM MARINE INSURANCE COMPANY, INC.,

Defendants-Appellees.

Appeal from the
United States District Court
For the Western District of Louisiana
(CA No. 92-1111 L-O)

ON PETITIONS FOR REHEARING
(January 17, 1995)

Before REYNALDO G. GARZA, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM*:

IT IS ORDERED that Appellants' petitions for rehearing filed in the above case are DENIED.

In denying Appellants' petitions for rehearing we take the opportunity to clarify and correct several points raised in the Petition for Rehearing and

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*Local Rule 47.5 provides: "the publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Certification to the Louisiana Supreme Court.

Appellants challenge the third Louisiana interest found in section B(2)(a) of our opinion in which we state that "Carriere was working for Grey Wolf pursuant to a Louisiana contract for hire." Petitioners' maintain first, that Carriere was actually working for Chandeleur, and second, that Carriere was working pursuant to a Texas contract between Chandeleur and Grey Wolf. This argument misreads the statement. The essential point of the statement is the undisputed fact that Carriere was working pursuant to a Louisiana contract for hire - albeit a contract with his direct employer Chandeleur. This is a substantial Louisiana interest that is reflected by the statement as written.

The fact that Carriere was employed by Chandeleur, while actually working for Grey Wolf pursuant to the Chandeleur-Grey Wolf contract does not diminish the fact that Carriere was working pursuant to a Louisiana contract for hire.

Appellants note - correctly - that we misspoke, in connection with the fourth Louisiana interest, in stating that Carriere's direct employer (Chandeleur) is domiciled in Louisiana. Chandeleur is not domiciled in Louisiana; and the fact that Chandeleur is a Texas corporation is noted elsewhere in the opinion. The statement should reflect that Chandeleur is authorized to do business in Louisiana, and in fact is doing business in Louisiana as is evidenced by the Louisiana contract for hire between Chandeleur and Carriere.

Our technical error of fact does not defeat the purpose of the statement, however, as the fact that Carriere's direct employer is actually present in Louisiana by virtue of doing business there, as opposed to being legally domiciled in Louisiana, still presents a substantial Louisiana interest that affects the analysis.

Appellants also assert that we failed to consider the "pertinent" fact that the contract between Grey Wolf and Chandeleur stipulated that Texas law would apply. Contrary to the Appellants' assertions, though, we did consider this assertion; we merely chose not to discuss it for reasons that should have been obvious: First, the issue was not raised below so we need not have considered it, even though we did so. Second, the

language of the contract provides that the "legal authority for interpretation of this contract, and the laws governing this transaction are agreed to be the laws of the state of Texas." Clearly this refers to the contract between Chandeleur and Grey Wolf and not the employment contract between Carriere and Chandeleur or the relationship and dispute between Carriere and Grey Wolf. As such, it does not mandate that Texas law is the applicable law for the instant dispute. This contractual choice of law argument is wholly without merit.

Finally, neither the remaining arguments advanced for rehearing, nor the request for certification merit attention. The decision of this panel stands.

ENTERED FOR THE COURT:

/S/
United States Circuit Judge